STATE OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 26, 2002

TO: PARTIES OF RECORD IN APPLICATION (A.) 00-11-038

Enclosed is Decision 02-11-074, which granted rehearing to modify Decision 02-10-063. The modification was effective on rehearing by replacing the entire text of D.02-10-063 adopted on October 24, 2002, with the ALJ's Proposed Decision as it was presented to the Commission for a vote on October 24, 2002, subject to the modifications to Findings of Fact Nos. 10-13 made in D.02-11-074. As modified on rehearing, this document is attached to D.02-11-074 as Attachment A and replaces D.02-10-063.

D.02-10-063 has been removed from the Commission's web page with the notation that it has been replaced by Attachment A to D.02-11-074.

Very truly yours,

Carol A. Brown
Interim Chief Administrative
Law Judge

Attachment

Decision 02-11-074 November 21, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 3338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (November 16, 2000)
Emergency Application of Pacific Gas and Electric Company to Adopt a Rate Stabilization Plan (U 39 E).	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

ORDER GRANTING REHEARING TO MODIFY DECISION 02-10-063

I. SUMMARY

Decision (D.) 02-10-063 adopted a methodology for setting a bond charge to recover the Department of Water Resource's (DWR) bond-related costs. That methodology applies a per kilowatt-hour (kWh) charge on all consumption that is not specifically excluded from the surcharge. The Commission excluded SDG&E residential sales up to 130% of baseline, and all medical baseline and California Alternate Rates Energy (CARE) eligible customer usage from the bond charges.

The Utility Reform Network (TURN), Pacific Gas & Electric Company (PG&E), and Southern California Edison Company (SCE) filed timely applications for rehearing of D.02-10-063. There are four main allegations of legal error raised in the applications for rehearing. First, TURN claims that by imposing the bond charge on

residential usage up to 130% of baseline for customers of PG&E and SCE, the Decision violates Water Code Section 80110. Second, TURN argues that the Decision is inconsistent in its use of "cost causation" principles. Third, PG&E claims that the Decision unlawfully approves an increase of $850 million in DWR bond-related costs. Finally, all parties claim that the determination to exclude only SDG&E's residential usage below 130% of baseline unlawfully discriminates against PG&E and SCE's customers, is an abuse of discretion, and is arbitrary and capricious.

The Office of Ratepayer Advocates (ORA), California Large Energy Consumers Association (CLECA), Alliance for Retail Energy Markets and Western Power Trading Forum (AREM/WPTF), California Industrial Users (CIU), SDG&E, and PG&E filed responses to the applications for rehearing. DWR submitted a memorandum in response to PG&E's Application for Rehearing.

After reviewing the Applications for Rehearing and the responses, we are of the opinion that rehearing should be granted in order to exempt from the bond charge all residential sales up to 130% of baseline in all three service territories. We will further modify the Decision in order to delete several findings of fact, which are unnecessary to the Decision. We are of the opinion that the remaining allegations contained in the Applications do not demonstrate legal error in the Decision.

II. DISCUSSION

A. TURN's Arguments Concerning the Commission's Interpretation of Water Code Section 80110 to Allow Imposing the Bond Charge on Usage Below 130% of Baseline Are Without Merit.

TURN argues that by imposing the bond charge on residential usage up to 130% of baseline for customers of PG&E and SCE, the Decision violates Water Code section 80110. TURN's argument is a matter of statutory interpretation. The relevant portion of Water Code 80110 provides:

> In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division.

TURN asserts that the above language was adopted only after an amendment was approved on the Senate floor on January 31, 2001, which deleted the words "electric procurement portion of" from the first line, before the words "electricity charges." According to TURN, this indicates that the Legislature meant that *all charges* for electricity were intended to be covered by the prohibition on increases, and that the specification of a bond charge for 130% baseline usage constitutes an increase in "the electricity charges in effect" at the time of enactment. (TURN App. at 3.) According to TURN, the Decision imposes a new charge, the bond charge, on 130% of baseline usage, at a level in excess of the charge in effect on February 1, 2001, which was zero.

TURN seems to argue that by removing the words "electric procurement portion of," the Legislature intended that no individual component of rates for electricity can be increased. However, there is no reason to conclude that this was the Legislature's intent. If the Legislature thought "electric procurement" was a "portion," i.e. subset, of "electricity charges," then this changed language would be less, not more, restrictive. However, in light of our changes to the Decision to exempt from the bond charge all residential usage under 130% of baseline (see below), we find it unnecessary to further address TURN's arguments on this point.

B. TURN's Arguments Concerning Allegedly Inconsistent Use of Cost Causation Principles In the Decision Are Without Merit.

TURN argues that the Decision is internally inconsistent in that it cites the policy of "cost causation" in justifying imposing the bond charge on usage up to 130% of

baseline, while rejecting cost causation as a basis for allocation of the bond charge elsewhere in the Decision. According to TURN, this reflects a "gross inconsistency" on the issue of cost causation, and unlawfully elevates the Commission's own view of equity over that of the Legislature, which TURN contends expressed a clear view of exempting 130% of baseline usage. (TURN App. at 7.) TURN also questions why the Commission exempted CARE and medical baseline customers at the expense of the Legislature's policy preference with respect to 130% of baseline usage.

Again, TURN's arguments turn on its interpretation of Water Code section 80110. As for the alleged inconsistencies in the treatment of cost causation principles, TURN fails to understand that the Commission looked to broad concepts of cost causation in determining which large classes of customers should pay the bond charge, but rejected the use of strict cost causation principles to determine exactly how much particular customers within these classes would have to pay. Again, however, we find we do not need to make a determination with respect to TURN's arguments in light of our decision to exempt all residential sales below 130% of baseline from the bond charge.

C. PG&E's Claims That the Decision Improperly Approves an $850 Million Increase In DWR's Bond-Related Costs Are Without Merit.

In its Application, PG&E argues that the Decision unlawfully approves an increase of $850 million in DWR's bond-related costs. However, the Decision does not "approve" or "adopt" an increase of $850 million in DWR's bond-related costs, nor does it adopt any specific numbers with regard to DWR's bond related costs. The Decision simply adopts a methodology to calculate a bond charge for recovering DWR's bond related costs.

PG&E refers to the Commission's consideration, at its meeting on August 12, 2002, of DWR's "Amended and Restated Addendum of Material Terms of Financing Documents," (Amendment) which included an $850 million increase in DWR's operating account balance. At that meeting, upon consideration of its General Counsel's report, the Commission voted 5-0 to authorize its General Counsel to consent to modifications to the

Summary of Material Terms for DWR's bond transaction. Notably, this matter was not approved by the Commission when it adopted the Bond Charge methodology on October 24, 2002.

Thereafter, on August 13, DWR did submit, in this proceeding, a transmittal note and "Supplemental Testimony of Douglas Montague on behalf of the California Department of Water Resources" which included additional material that DWR relied upon in its own proceeding resulting in its proposed determination of its revenue requirement. (This additional material made reference to the same $850 million increase in DWR's operating account balance that was included in the Amendment.) PG&E argues that the Decision improperly accepts and relies upon this material that was submitted by DWR after hearings were completed and the case submitted, and that it was not subject to discovery or cross-examination by the parties. However, the Decision simply identifies this material as Reference Exhibit 1-a and considers it only as illustrative of DWR's ongoing work in placing the bonds and estimating their costs. The Decision uses the figures to help illustrate the applicability of the bond charge methodology over a range of financing possibilities. DWR was directed to file a more precise revenue requirement following its placement of the bonds.

The Application's allegations of error regarding the size of the bond transaction address matters not material to the Bond Charge Decision, and do not demonstrate error in D.02-10-063. Rather, the Application attempts to collaterally attack the Amendment. PG&E's arguments also constitute a collateral attack on the Rate Agreement (which establishes and explains the mechanism the Commission used to review the Amendment) and mischaracterize the Commission's actions, as explained below.

Further, as DWR points out in its Response, it is DWR's responsibility to review and adopt its Bond Related Costs consistent with Water Code sections 80110 and 80134. DWR notes that PG&E and all interested persons received notice of and an opportunity to comment on DWR's bond related costs during DWR's own administrative proceeding, which resulted in DWR's August 16, 2002 Determination of Revenue

Requirements. As the Decision notes, DWR's Reference Exhibit 1-a was also filed in DWR's proceeding. Thus the appropriate place for PG&E to comment on the reasonableness of DWR's bond related costs was in DWR's proceeding, not the proceeding leading up to the Bond Charge Decision. PG&E's arguments amount to a collateral attack on DWR's Revenue Requirement Determination.

PG&E's claims also amount to a collateral attack against the Rate Agreement Decisions and the procedures set forth in those Decisions regarding the authority delegated to the Commission's General Counsel to approve modifications to the Summary of Material Terms of DWR's bond transaction. In Decision 02-03-063, we addressed PG&E's claims concerning our ability to approve changes in the Financing Documents without opportunity for public comment:

> The Application further claims that minimum standards of due process do not permit the Commission, whether through its General Counsel or otherwise, to approve changes in the Financing Documents without opportunity for public comment. This claim misunderstands the nature of the Commission's role as a participant in the bond transaction that is being undertaken by DWR and the State Treasurer's Office (STO). As the Decision explains, the Commission is not a decision-maker for issues relating to the bond transaction. The Rate Agreement provides the Commission with a consultative role because we have an interest in keeping ratepayer costs low. (D[.02-02-051] at 36-37.) But we can only "participate" in the process and advise DWR and the STO, who have "responsibility for issuing the bonds." (D[.02-02-051] at 36, mimeo, Cf., Water Code § 80132.) These circumstances are reflected in the process designed to convey our views. We will consider the recommendations of staff, and direct staff to take certain positions when they participate in the drafting of Financing Documents, but we will do so outside the scope of a formal proceeding, just as we direct staff to take positions in other contexts. The Application is incorrect to assert that regulated entities have a right to participate in the process by which the Commission directs its staff.

D.02-03-063 at 14. Although we determined that there was no due process violation in the mechanism described above, we decided to provide a public process with an opportunity for comment we authorized changes to the material terms beyond those described in the Summary. We further stated that:

> Such opportunity for comment would have to take into account the probable need for very prompt action by the Commission on any DWR request to enter into Financing Documents with material terms that fall outside the parameters specified in the Summary. The amount of time available for comment may be comparable to the amount of time for comment available on the original Summary. As explained in the Decision, any such approval of additional authority to the General Counsel would occur outside a formal proceeding. However, it would take place at a Commission meeting, where the public may comment on matters before the Commission. Most likely, such approval would be granted upon consideration of a report from the General Counsel. In that situation, the General Counsel could circulate DWR's request to those persons appearing on the service list in this proceeding, with an opportunity to submit comments. The General Counsel could then summarize the substance of the comments in the report to the Commission prior to the Commission's vote. Regardless of what precise method we will use, the Decision shall be modified to state that relevant documents provided to the Commission will be made public, and an opportunity to comment will be provided.

PG&E's claim that the Commission violated the Rate Agreement by not following the procedure outlined above is without merit. When the Amendment was presented to the Commission, DWR's request was circulated to those persons appearing on the service list in this proceeding; parties were given an opportunity to comment; and Commission staff summarized the substance of parties' comments in a report to the Commission prior to the Commission's vote. Any disagreement PG&E has over the adequacy of this process or the nature of the Commission's consideration of the

Amendment, are in fact challenges to the Rate Agreement Decisions, which are now final and unappealable.

PG&E also makes vague assertions that DWR and Commission staff engaged in "extra-record secret meetings" and "secret negotiations" and otherwise engaged in improper *ex parte* contacts during the course of this proceeding. PG&E misapprehends the consultative roles DWR and the Commission have with regard to the State of California's efforts to recover costs the State incurred during the energy crisis. AB1X specifically provides that other state agencies are to provide DWR "reasonable assistance or other cooperation" in carrying out the statute. (Water Code § 80016.) The statute further provides for DWR to consult with the Commission. (Water Code § 80100(f).) As DWR points out, its participation in this proceeding has been limited to providing information necessary for the Commission to adopt a mechanism to recover Bond-Related Costs from ratepayers. This information has been provided on the record and has been available to all interested parties. Moreover, all discussions between DWR and Commission representatives concerning the amount and structure of the bond transaction, which is outside the scope of this proceeding, have been in a manner consistent with the consultation provisions of the Rate Agreement.

PG&E also points to four Findings of Fact in the Decision, which it claims are based on DWR's Supplemental Testimony identified as Reference Exhibit 1-a:

> 10. Exhibit 1 and Reference Exhibit 1-a indicate that DWR plans to fund reserve accounts at high levels.
>
> 11. The reserve balances provide bondholders with additional security, protecting the revenues designated for repayment of bonds from being used to pay the costs of priority contracts.
>
> 12. The reserve balances help maintain a quality investment-grade credit rating for DWR's bonds.
>
> 13. As a result of the additional security provided to bondholders and the higher credit rating that the reserves produce, the reserves can help to lower overall costs of bonds.

Upon further review, we find that these Findings of Fact are not necessary to our Decision. The Decision is very clear that it is not the Commission's duty to find that any particular size of reserves or particular size of the bond cost is reasonable. This Decision concerns only the allocation of DWR's bond costs; the size and structure of the bond transaction, including the size of the reserves, are not the Commission's responsibility and are not at issue in this Decision. Accordingly, these findings are not necessary to support our determination concerning the methodology we use to set a bond charge and we will delete them from the Decision.

D. The Decision Should Be Modified In Order to Exempt All Residential Sales of Up To 130% of Baseline Usage From the Bond Charge.

TURN, SCE, and PG&E's Applications all claim that the Decision errs by exempting SDG&E's residential sales up to 130% of baseline from the bond charge. The Applications provide various arguments that the Decision unlawfully grants a preference and advantage to SDG&E's customers, and discriminates against similarly situated customers of SCE and PG&E. The Applications further argue that there is not a sufficient basis for treating SDG&E's 130% of baseline usage customers differently from PG&E and SCE's 130% of baseline usage customers.

We have reviewed the arguments in the Applications and the responses, and upon reconsideration, we determine that we ought to treat SDG&E's 130% of baseline customers in the same manner as PG&E and SCE's customers. We will accordingly modify the Decision to exempt *all* residential sales below 130% of baseline usage. We find that the simplest way to achieve this is to replace the entire text of the Decision as we adopted it on October 24, 2002, with the ALJ's Proposed Decision as it was presented to the Commission for a vote on October 24, 2002, subject to the modifications to the Findings of Fact Nos. 10-13 as explained above. We have modified the text of the ALJ's Proposed Decision in order to delete Findings of Fact Nos. 10-13, for the reasons explained above, and have attached this document to this decision as Attachment A. Accordingly, Decision 02-02-063 will be modified to read as Attachment A.

IT IS ORDERED that:

1. The Applications for Rehearing of Decision 02-10-063 are granted so that we may modify the Decision to exempt all residential sales of up to 130% of baseline usage from the bond charge. Decision 02-10-063 shall be modified by replacing the entire text of the decision with Attachment A.
2. As modified, the Applications for Rehearing of Decision 02-10-063 are denied.

This order is effective today.

Dated November 21, 2002 at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
Commissioners

Commissioner Geoffrey F. Brown, being necessarily absent, did not participate.

I dissent.

/s/ Michael R. Peevey
Commissioner